

AMENDED IN SENATE MAY 3, 2005

AMENDED IN SENATE APRIL 6, 2005

**SENATE BILL**

**No. 429**

**Introduced by Senator Florez**

February 17, 2005

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An act to amend Sections 115880 and 115885 of, and to add Article 1.5 (commencing with Section 115860) to Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

SB 429, as amended, Florez. Recreational bathing: sanitation.

(1) Existing law provides that it is the policy of the state that multiple use should be made of all public water within the state, to the extent that multiple use is consistent with public health and safety. Existing law requires that all water supply reservoirs of a public agency shall be open for recreational use by the people of the state, subject to the regulations of the State Department of Health Services. Existing law prohibits recreational uses involving bodily contact with water by any participant, with respect to a reservoir in which water is stored for domestic use, except under specified circumstances.

This bill would require the department, by March 1, 2006, to convene a public advisory group to advise the department on the development of minimum standards for sanitation of high-use or priority freshwater bathing areas, as defined. The bill would require the department, by December 31, 2008, to establish minimum sanitation standards for the recreational use of the public freshwater bathing areas. The bill would impose various duties on the department and local health officers and environmental health directors in this regard, thereby imposing a state-mandated local program, but would provide that the duties of a local public officer or agency shall only be

mandatory during a fiscal year in which the Legislature has appropriated sufficient funds for those purposes.

This bill would provide that if sufficient funds are not appropriated and local agencies do not comply with any duty imposed pursuant to these provisions, the local agency shall notify the public by posting a notice to that effect at the public beach.

(2) Existing law requires the department to establish minimum standards for the sanitation of public beaches. Existing law requires the health officer with jurisdiction over the area in which a public beach is created to inspect the public beach to determine compliance with these standards. Under existing law, any duty imposed upon a local public officer or agency pursuant to these provisions is only mandatory during a fiscal year in which the Legislature has appropriated sufficient funds therefor.

This bill would provide that if sufficient funds are not appropriated and local agencies do not comply with any duty imposed pursuant to the above provisions, the local agency shall notify the public by posting a notice to that effect at the public beach, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 1.5 (commencing with Section 115860)  
2 is added to Chapter 5 of Part 10 of Division 104 of the Health  
3 and Safety Code, to read:

4  
5 Article 1.5. Public Freshwater Bathing Areas

6  
7 115860. (a) By March 1, 2006, the department shall convene  
8 a public advisory group consisting of representatives of local

1 health officers or environmental health directors, water agencies,  
2 state and local recreation providers, recreation user groups,  
3 recreation-oriented businesses, and public interest groups, to  
4 advise the department on the development of minimum standards  
5 for sanitation of high-use or priority freshwater bathing areas and  
6 to make recommendations regarding development of the  
7 regulations required by subdivision (b).

8 (b) By December 31, 2008, the department shall, by  
9 regulation, and taking into consideration the recommendations of  
10 the public advisory group, establish minimum standards for the  
11 sanitation of public freshwater bathing areas, as the department  
12 determines are reasonably necessary for the protection of the  
13 public health and safety.

14 (c) For purposes of this article, a “public freshwater bathing  
15 area” means a public recreation area located on a freshwater,  
16 brackish, or estuarine body of water at which a federal, state, or  
17 local agency maintains recreational facilities for public use, and  
18 at which bodily contact recreation is not prohibited. *For the*  
19 *purposes of this article, “public freshwater bathing area” does*  
20 *not include a public recreation area within the jurisdiction of the*  
21 *San Francisco Bay Conservation and Development Commission.*

22 (d) For purposes of this article, a “high-use or priority public  
23 freshwater bathing area” means a public freshwater bathing area  
24 that meets any of the following conditions, as determined and  
25 posted by the local health officer or environmental health  
26 director; or the department:

27 (1) Meets or exceeds high-use density criteria established in  
28 regulations adopted by the department pursuant to this section.

29 (2) Is listed as an impaired water body pursuant to 33 U.S.C.  
30 Sec. 1313(d)(1)(A) in the federal Clean Water Act, as a result of  
31 bacterial contamination and consequent nonattainment of the  
32 recreational beneficial use.

33 (3) Is determined by the local health officer or environmental  
34 health director, or by the department, to pose a potential health  
35 risk to a significant number of people.

36 (e) At a minimum, the regulations shall do all of the following:

37 (1) Require the testing of the waters in all high-use or priority  
38 public freshwater bathing areas for microbiological contaminants  
39 established pursuant to subparagraph (3), which may include  
40 total coliform, fecal coliform, and enterococci bacteria. Testing

1 shall be conducted on at least a weekly basis, from April 1 to  
2 October 31, inclusive, of each year, beginning in 2009.

3 (2) Establish criteria for determining high-use and priority  
4 bathing densities.

5 (3) Establish protective minimum standards for  
6 microbiological indicators that the department determines are  
7 appropriate for testing pursuant to paragraph (1). In establishing  
8 these standards, the department shall consult with the State Water  
9 Resources Control Board to avoid inconsistency with water  
10 quality control plans and shall also consider the United States  
11 Environmental Protection Agency ambient water quality criteria  
12 for bacteria.

13 (4) Establish protocols for both of the following:

14 (A) Determining monitoring site locations and monitoring  
15 frequency based on risks to public health.

16 (B) Making decisions regarding public notification of health  
17 hazards, including, but not limited to, the posting, closing, and  
18 reopening of public freshwater bathing areas.

19 (5) Provide that the monitoring frequency and locations  
20 established pursuant to this subdivision may only be reduced or  
21 altered in accordance with procedures established in the related  
22 regulations.

23 (f) The local health officer or environmental health director  
24 shall be responsible for testing the waters adjacent to, and for  
25 coordinating the testing of, all public freshwater bathing areas  
26 within his or her jurisdiction.

27 (g) The local health officer or environmental health director  
28 may meet the testing requirements of this section by utilizing test  
29 results from other agencies conducting microbiological  
30 contamination testing of the waters under his or her jurisdiction.

31 (h) Any city or county or city and county may adopt standards  
32 for the sanitation of freshwater bathing areas within its  
33 jurisdiction in which bodily contact with the water is not  
34 prohibited, that are stricter than the standards adopted by the  
35 department pursuant to this section.

36 (i) (1) Any duty imposed upon a local public officer or agency  
37 pursuant to this section shall be mandatory only during a fiscal  
38 year in which the Legislature has appropriated sufficient funds,  
39 as determined by the Director of Health Services, in the annual  
40 Budget Act or other statute, for local agencies to cover the costs

1 to those agencies associated with the performance of these duties.  
2 The Director of Health Services shall annually file, within 15  
3 days after enactment of the Budget Act, a written statement with  
4 the Secretary of the Senate and with the Chief Clerk of the  
5 Assembly, memorializing whether sufficient funds have been  
6 appropriated.

7 (2) If sufficient funds are not appropriated and local agencies  
8 do not comply with any duty imposed upon a local public officer  
9 or agency pursuant to this section, the local agency shall notify  
10 the public by posting notice at the public freshwater bathing area  
11 that the local agency is not complying with that duty.

12 115861. (a) The local health officer or environmental health  
13 director having jurisdiction over the area in which a public  
14 freshwater bathing area is located shall do all of the following:

15 (1) Determine compliance with the standards established  
16 pursuant to Section 115860. If the local health officer or  
17 environmental health director determines that the standards are  
18 not being met, he or she may restrict the use of, or close, the  
19 public freshwater bathing area until compliance with the  
20 standards occurs.

21 (2) (A) Investigate any complaint of ~~person of a~~  
22 noncompliance with standards established pursuant to Section  
23 115860. If the local health officer or environmental health  
24 director determines that the standards prescribed by the  
25 department are not being met, he or she may restrict the use of, or  
26 close, the public freshwater bathing area until compliance with  
27 the standards occurs.

28 (B) If the person who made the complaint is not satisfied with  
29 the action taken by the local health officer or environmental  
30 health director, he or she may report the alleged violation to the  
31 department. If a violation is reported to the department, the local  
32 health officer or environmental health director shall provide a  
33 report to the department supporting the local decision. The  
34 department shall review the report and may either uphold or  
35 overrule the decision or part of the decision, and make its own  
36 order regarding restriction or closure of the public freshwater  
37 bathing area.

38 (3) Inform any agency responsible for the operation and  
39 maintenance of the public freshwater bathing area within 24

1 hours, whenever a public freshwater bathing area is posted,  
2 closed, or otherwise restricted.

3 (4) Report any violation of the regulations relating to posting,  
4 closure, or other restrictions established pursuant to Section  
5 115860, and determined by the local health officer or  
6 environmental health director, to the district attorney, or, if the  
7 violation occurred in a city and the city attorney is authorized to  
8 prosecute misdemeanors pursuant to Section 41803.5 of the  
9 Government Code, to the city attorney.

10 (b) (1) Any duty imposed upon a local public officer or local  
11 agency pursuant to this section shall be mandatory only during a  
12 fiscal year in which the Legislature has appropriated sufficient  
13 funds, as determined by the Director of Health Services, in the  
14 annual Budget Act or other statute, for local agencies to cover the  
15 costs to those agencies associated with the performance of these  
16 duties. The director shall annually, within 15 days after  
17 enactment of the Budget Act, file a written statement with the  
18 Secretary of the Senate and with the Chief Clerk of the Assembly  
19 memorializing whether sufficient funds have been appropriated  
20 for these purposes.

21 (2) If sufficient funds are not appropriated and local agencies  
22 do not comply with any duty imposed upon a local public officer  
23 or agency pursuant to this section, the local agency shall notify  
24 the public by posting notice at the public freshwater bathing area  
25 that the local agency is not complying with that duty.

26 SEC. 2. Section 115880 of the Health and Safety Code is  
27 amended to read:

28 115880. (a) The department, in consultation with local health  
29 officers or environmental health directors and the public, shall  
30 adopt regulations to establish minimum standards for the  
31 sanitation of public beaches, including, but not limited to, the  
32 removal of refuse, as it determines ~~is~~ *are* reasonably necessary  
33 for the protection of the public health and safety.

34 (b) Prior to final adoption by the department, the regulations  
35 and standards required by this section shall undergo an external  
36 comprehensive review process similar to the process set forth in  
37 Section 57004 of the Health and Safety Code.

38 (c) The regulations shall, at a minimum, do all of the  
39 following, by December 31, 1998:

1 (1) Require the testing of the waters adjacent to all public  
2 beaches for microbiological contaminants, including, but not  
3 limited to, total coliform, fecal coliform, and enterococci  
4 bacteria. The department may require the testing of waters  
5 adjacent to all public beaches for microbiological indicators other  
6 than those set forth in this paragraph, or a subset of those set  
7 forth in this paragraph, if the department affirmatively  
8 establishes, based on the best available scientific studies and the  
9 weight of the evidence, that the alternative indicators are as  
10 protective of the public health.

11 (2) Establish protective minimum standards for total coliform,  
12 fecal coliform, and enterococci bacteria, or for other  
13 microbiological indicators that the department determines are  
14 appropriate for testing pursuant to paragraph (1).

15 (3) Establish protocols for all of the following:

16 (A) Determining monitoring site locations and monitoring  
17 frequency based on risks to public health.

18 (B) Making decisions regarding public notification of health  
19 hazards, including, but not limited to, the posting, closing, and  
20 reopening of public beaches.

21 (4) Require that the waters adjacent to public beaches be tested  
22 for total coliform, fecal coliform, and enterococci bacteria, or for  
23 other microbiological indicators that the department determines  
24 are appropriate for testing pursuant to paragraph (1). Except as  
25 set forth in paragraph (5), testing shall be conducted on at least a  
26 weekly basis, from April 1 to October 31, inclusive, of each year,  
27 beginning in 1999, if all of the following apply:

28 (A) The beach is visited by more than 50,000 people annually.

29 (B) The beach is located on an area adjacent to a storm drain  
30 that flows in the summer.

31 (5) Provide that the monitoring frequency and locations  
32 established pursuant to this subdivision and related regulations  
33 may only be reduced or altered after the testing required pursuant  
34 to paragraph (4) reveals levels of microbiological contaminants  
35 that do not exceed for a period of two years the minimum  
36 protective standards established pursuant to paragraph (2).

37 (d) The local health officer or environmental health director  
38 shall be responsible for testing the waters adjacent to, and  
39 coordinating the testing of, all public beaches within his or her  
40 jurisdiction.

(e) The local health officer or environmental health director may meet the testing requirements of this section by utilizing test results from other agencies conducting microbiological contamination testing of the waters under his or her jurisdiction.

(f) Any city or county or city and county may adopt standards for the sanitation of public beaches within its jurisdiction that are stricter than the standards adopted by the state department pursuant to this section.

(g) (1) Any duty imposed upon a local public officer or agency pursuant to this section shall be mandatory only during a fiscal year in which the Legislature has appropriated sufficient funds, as determined by the State Director of Health Services, in the annual Budget Act or otherwise for local agencies to cover the costs to those agencies associated with the performance of these duties. The State Director of Health Services shall annually, within 15 days after enactment of the Budget Act, file a written statement with the Secretary of the Senate and with the Chief Clerk of the Assembly memorializing whether sufficient funds have been appropriated.

(2) If sufficient funds are not appropriated and local agencies do not comply with any duty imposed upon a local public officer or agency pursuant to this section, the local agency shall notify the public by posting a notice at the public beach that the local agency is not complying with that duty.

SEC. 3. Section 115885 of the Health and Safety Code is amended to read:

115885. The local health officer or environmental health director having jurisdiction over the area in which a public beach is created shall do all of the following:

(a) Inspect the public beach to determine whether the standards established pursuant to Section 115880 are being complied with. If the local health officer or environmental health director finds any violation of the standards, he or she may restrict the use of, or close, the public beach or portion thereof in which the violation occurs until the standard is complied with.

(b) Investigate any complaint of a person of a violation of any standard established by the department pursuant to Section 115880. If the local health officer or environmental health director finds any violation of the standards prescribed by the department, he or she may restrict the use of, or close, the public



1 beach or portion thereof until the standard is complied with. If  
2 the person who made the complaint is not satisfied with the  
3 action taken by the local health officer or environmental health  
4 director, he or she may report the violation to the department.  
5 The department shall investigate the reported violation, and, if it  
6 finds that the violation exists, it may restrict the use of or close  
7 the public beach or portion thereof until the standard violated is  
8 complied with.

9 (c) (1) Whenever a beach is posted, closed, or otherwise  
10 restricted in accordance with Section 115915, the local health  
11 officer or environmental health director shall inform the agency  
12 responsible for the operation and maintenance of the public  
13 beach within 24 hours of the posting, closure, or restriction.

14 (2) The local health officer or environmental health director  
15 shall establish a telephone hotline to inform the public of all  
16 beaches currently closed, posted, or otherwise restricted. The  
17 hotline shall be updated as needed in order to convey changes in  
18 public health risks.

19 (d) Report any violation of the standards established pursuant  
20 to Section 115880 to the district attorney, or if the violation  
21 occurred in a city and, pursuant to Section 41803.5 of the  
22 Government Code, the city attorney is authorized to prosecute  
23 misdemeanors, to the city attorney.

24 (e) In the event of a known untreated sewage release, the local  
25 health officer or environmental health director shall immediately  
26 test the waters adjacent to the public beach and to take action  
27 pursuant to regulations established under Section 115880.

28 (f) Notwithstanding any other provision of law, in the event of  
29 an untreated sewage release that is known to have reached  
30 recreational waters adjacent to a public beach, the local health  
31 officer or environmental health director shall immediately close  
32 those waters until it has been determined by the local health  
33 officer or environmental health director that the waters are in  
34 compliance with the standards established pursuant to Section  
35 115880.

36 (g) (1) Any duty imposed upon a local public officer or  
37 agency pursuant to this section shall be mandatory only during a  
38 fiscal year in which the Legislature has appropriated sufficient  
39 funds, as determined by the State Director of Health Services, in  
40 the annual Budget Act or otherwise for local agencies to cover

1 the costs to those agencies associated with the performance of  
2 these duties. The State Director of Health Services shall annually,  
3 within 15 days after enactment of the Budget Act, file a written  
4 statement with the Secretary of the Senate and with the Chief  
5 Clerk of the Assembly memorializing whether sufficient funds  
6 have been appropriated.

7 (2) If sufficient funds are not appropriated and local agencies  
8 do not comply with any duty imposed upon a local public officer  
9 or agency pursuant to this section, the local agency shall notify  
10 the public by posting a notice at the public beach that the local  
11 agency is not complying with that duty.

12 SEC. 4. If the Commission on State Mandates determines that  
13 this act contains costs mandated by the state, reimbursement to  
14 local agencies and school districts for those costs shall be made  
15 pursuant to Part 7 (commencing with Section 17500) of Division  
16 4 of Title 2 of the Government Code.